

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>Gulf Haulage Heavy Lift Co.,</b>	§	
	§	
<b>Petitioner,</b>	§	
	§	
<b>v.</b>	§	<b>Civil Action No. 4:18-cv-04392</b>
	§	
<b>Swanberg International, Ltd.,</b>	§	
	§	
<b>Respondent.</b>	§	

**PETITIONER’S MOTION PURSUANT TO 9 U.S.C. §§ 6 & 208  
TO MODIFY IN PART ORDER FOR CONFERENCE (ECF 4)**

This is a summary proceeding to confirm a foreign arbitral award pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention” or “Convention”). *See* 9 U.S.C. § 201 *et seq.* “The Convention mandates a summary procedure modeled after federal motion practice to resolve motions to confirm.” *Matter of Arbitration Between Trans Chem. Ltd. & China Nat. Mach. Imp. & Exp. Corp.*, 978 F. Supp. 266, 309 (S.D. Tex. 1997); *see also* 9 U.S.C. § 6 (requiring that an application under Federal Arbitration Act “shall be made and heard in the manner provided by law for the making and hearing of motions”), § 208 (applying FAA to applications under the Convention to confirm foreign arbitral awards). Respondent has admitted that this is a summary proceeding. *See* Answer (ECF 7), at 2 ¶ 5.

In light of the summary nature of this proceeding, GHHL hereby requests that the Order for Conference and Disclosure of Interested Parties (“Conference Order”) be modified in part as set forth below.

**A. Paragraph 3: Joint Discovery/Case Management Plan**

“Discovery is particularly inappropriate in enforcement proceedings under the New York Convention,” since it is a “summary procedure.” *Karaha Bodas Co., L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 190 F. Supp. 2d 936, 942 & 952 (S.D. Tex. 2001) (citing *Imperial Ethiopian Gov't v. Baruch-Foster Corp.*, 535 F.2d 334, 335 & 337 (5th Cir. 1976)). Given the unavailability of discovery in this summary proceeding, GHHL respectfully requests that the Court vacate paragraph 3 of the Conference Order, which otherwise requires that the parties submit a proposed joint discovery/case management plan.<sup>1</sup>

**B. Paragraph 7: Alternative Dispute Resolution**

A “confirmation proceeding under the Convention is not an original action, it is rather in the nature of a post-judgment enforcement proceeding.” *Encyclopaedia Universalis S.A. v. Encyclopaedia Britannica, Inc.*, 403 F.3d 85, 89, n.2 (2d Cir. 2005) (internal quotation marks, citations and brackets omitted). That being so, alternative dispute resolution at this late juncture would not be appropriate. Indeed, by definition, the parties have already completed an alternative dispute resolution process by way of arbitration, which resulted in a final award that is binding on the parties. Therefore, GHHL respectfully requests that the Court vacate paragraph 7 of the Conference Order, which otherwise requires the parties to discuss the appropriateness of alternative dispute resolution in advance of the scheduled conference.<sup>2</sup>

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<sup>1</sup> Paragraph 3 provides as follows: “After the parties confer (in person or by telephone) as required by FED. R. CIV. P. 26(f), counsel and all parties appearing *pro se* shall prepare and file not less than 10 days before the conference a joint discovery/case management plan containing the information as required by FED. R. CIV. P. 26(f) using the form available at [http://www.txs.uscourts.gov/sites/txs/files/ahb\\_jdcmp.pdf](http://www.txs.uscourts.gov/sites/txs/files/ahb_jdcmp.pdf).”

<sup>2</sup> Paragraph 7 provides as follows: “Counsel and all parties appearing *pro se* shall discuss whether alternative dispute resolution is appropriate and at the conference advise the court of the results of their discussions.”

**C. Paragraph 1: Initial Pretrial and Scheduling Conference**

The Conference Order sets an initial pretrial and scheduling conference to take place before the Court on **March 1, 2019 at 9:00 a.m.** See ECF 4, ¶ 1. GHHL respectfully submits that the purpose of this scheduled conference be dedicated to hearing argument on GHHL's dispositive Motion for Order Confirming Arbitral Award and for Judgment (ECF 11).

**REQUEST FOR RELIEF**

GHHL respectfully requests entry of the proposed order being filed with the present Motion, which would modify the Conference Order as set forth above. GHHL additionally requests all other just relief to which it is entitled.

Dated: January 17, 2019

Respectfully submitted,

/s/ C. Mark Baker

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### **CERTIFICATE OF CONFERENCE**

Under Local Rule 7.1(D) of the United States District Court for the Southern District of Texas, undersigned counsel for Petitioner attempted to confer with counsel of record for Respondent concerning the substance of this motion via email messages sent on January 16 and 17, 2019. Through counsel of Record, Respondent indicated it is opposed to the relief sought in this motion. Accordingly, the parties are at an impasse, necessitating the filing of this motion.

/s/ Denton Nichols

Denton Nichols

### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing motion and proposed order were filed with the Court's electronic case filing (ECF) system on the 17th day of January, 2019, which caused an electronic copy of these documents to be served on the following counsel of record for Respondent who have appeared in this matter:

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